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EXAMINER  
BASIN

ART UNIT  
1646

PAPER NUMBER

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#11

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/051,843

Applicant(s)  
Wilson et al

Examiner  
Nirmal. S. Basu

Group Art Unit  
1646



- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 12 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

ELK  
9/30/99

## Disposition of Claims

- ☒ Claim(s) 1-35 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claims 1-35 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### DETAILED ACTION

**Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

#### *Election/Restrictions*

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-6 and 7, drawn to isolated nucleic acid molecule encoding an hemopoietin receptor, isolated nucleic acid molecule comprising SEQ ID NO:1, isolated nucleic acid molecule encoding SEQ ID NO:2, vectors encoding, cells containing the afore mentioned expression vectors and method of producing the protein.

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Group II, claim(s) 1-10, 25 and 28-30, drawn to isolated nucleic acid molecule encoding an hemopoietin receptor, isolated nucleic acid molecule comprising SEQ ID NO:3, isolated nucleic acid molecule encoding SEQ ID NO:4, vectors encoding, cells containing the afore mentioned expression vectors and method of producing the protein.

5           Group III, claim(s) 11-17 and 24 drawn to recombinant polypeptide comprising SEQ ID NO:2 or encoded by SEQ ID NO:1.

Group IV, claim(s) 11-17 and 24 drawn to recombinant polypeptide comprising SEQ ID NO:3 or encoded by SEQ ID NO:4.

10           Group V, claim(s) 18-19, drawn to antibody which binds to recombinant polypeptide comprising SEQ ID NO:2 or encoded by SEQ ID NO:1.

Group VI, claim(s) 18-19, drawn to antibody which binds to recombinant polypeptide comprising SEQ ID NO:4 or encoded by SEQ ID NO:3.

15           Group VII, claim(s) 20, drawn to hybrid hemopoietin receptor capable of interaction with at least two cytokine, said hybrid containing all or part of the amino acid sequence set forth in SEQ ID NO:2.

Group VIII, claim(s) 20, drawn to hybrid hemopoietin receptor capable of interaction with at least two cytokine, said hybrid containing all or part of the amino acid sequence set forth in SEQ ID NO:4.

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Group IX, claim(s) 21, 23 drawn to hybrid hemopoietin receptor capable of interaction with at least one cytokine, said hybrid containing all or part of the amino acid sequence set forth in SEQ ID NO:2.

Group X claim(s) 21, 23 drawn to hybrid hemopoietin receptor capable of interaction with at least one cytokine, said hybrid containing all or part of the amino acid sequence set forth in SEQ ID NO:4.

Group XI, claim(s) 20 drawn to hybrid hemopoietin receptor capable of interaction IL4.

Group XII, claim(s) 26, drawn a method of treatment using the recombinant protein of Group III.

Group XIII, claim(s) 26, drawn to method of treatment using the recombinant protein of Group IV.

Group XIV, claim(s) 27, drawn to method of treating asthma using the recombinant protein of Group III.

Group XV, claim(s) 27, drawn to method of treating asthma using the recombinant protein of Group IV.

Group XVI claim(s) 31-32 drawn to chimeric protein comprising a first portion capable of interaction with IL-13 and a second portion with haemopoietin receptor, receptor tyrosine kinase, TNF/NGF receptor or a G protein receptor.

Group XVII, claim(s) 33 and 35 drawn to method of monitoring the level of IL-4.

Group XVIII, claim(s) 34 and 35, drawn to method of monitoring the level of IL-3.

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2. The inventions listed as Groups I-XVIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The inventive concept of a hemopoietin receptor (IL-3 and IL-7 receptor, the erythropoietin receptor and the G-CSF receptor has been disclosed by Nicola N. A. (see IDS Ref AQ). Because the special technical feature of Group I has been found in the prior art, a technical relationship does not exist between the claimed groups. Therefore, unity of invention is lacking. The inventions of Groups II-XVII are drawn to products having materially different structures and functions, each defines a separate invention over the art.

10 Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

#### Advisory Information

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nirmal Basi whose telephone number is (703) 308-9435. The examiner can normally be reached on Monday-Thursday from 9:00 to 5:30.

5 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, can be reached on (703) 308-4310. The fax phone number for this Group is (703) 308-0294.

10 Official papers filed by fax should be directed to (703) 308-4242. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Nirmal S. Basi

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September 28, 1999

*Elizabeth C. Kemmerer*

ELIZABETH KEMMERER  
PRIMARY EXAMINER



# RESTRICTION ELECTION FACSIMILE TRANSMISSION

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